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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/980,084	05/02/2002	Andrew Laitt	000026.00031	8099

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EXAMINER	
DESAI, HEMANT	

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 05/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/980,084	LAITT, ANDREW	
	Examiner	Art Unit	
	Hemant M Desai	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 March 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20,22 and 24-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20, 22 and 24-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Examiner maintains that the language, "wherein...cushioning." (claim 1, lines 6-8), "whereby, ...cushioning" (claim 29, lines 7-9) renders the claim indefinite because there is no positive step set forth, which makes the claim language ambiguous. Also by mentioning that pre-determined dimensions and volume of the bag and volume of the foodstuff is less than the volume of the bag, it is not clear whether the predetermined amount of air is trapped during the process of packaging and thus an inherent part of the process or it requires a separate step.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 12-13, 16-20, 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Davy (3199756).

Davy discloses a method of a method of packaging a brittle food-stuff (see col. 2, lines 32-33) comprising the steps of forming a tube (16, fig. 4), forming seal at top and bottom (19, fig. 4), feeding pre-determined amount of food (B, fig. 4) and forming a strip of sealed pouches (see figs. 5) of predetermined dimensions containing the food stuff (B) and inserting the strip of sealed pouches in a carton (E, fig. 5), which meets all the claimed limitations. Note that in Davy, pre-determined dimensions of bag and containing air is an inherent part of the method. Also the volume of the foodstuff is less than the volume of the bag to contain the foodstuff in the bag.

Regarding claims 12-13, the sealing is by means of heat (sealing roller 18, fig. 4).

Regarding claims 17-20, the perforations (g, fig. 1) are formed between each pouch of the strip of pouches.

Regarding claim 22, the packaged brittle foodstuff produced by the method.

Regarding claims 26 and 27, strip of filled pouches is folded at points between the pouches and inserted into the carton (see fig. 5).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 2-6, 9-11, 14-15 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (3199756).

Regarding claims 2-6 and 24-27, Davy discloses to insert strip of pouches into a carton. Davy does not disclose expressly that the sealed strip of pouches should be arranged in a certain configuration or single or double strip should be arranged in a carton.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to arrange the sealed strip of pouches in a certain configuration or single or double strip should be arranged in a carton because Applicant has not disclosed that by arranging the sealed strip of pouches in a certain configuration or by inserting single or double strips of sealed pouches in the carton provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the way Davy discloses to inert the strip of pouches into a carton because both arrangements would perform equally well as far as the packaging of the sealed strip of pouches in the carton is concerned.

Therefore, It would have been an obvious matter of design choice to modify Davy to obtain the invention as specified in claims 2-6.

Regarding claims 9-11, for the same reasons, as mentioned above it would have been obvious matter of design choice to modify Davy to obtain the invention as specified in claims 9-11.

Regarding claims 14-15, Davy discloses paper, glassine or cellophane bag material. Davy does not disclose expressly the plastic or waxed paper. However, use of plastic or waxed paper for potato chips or any foodstuff is well known in the art at the

time the invention was made to make the package moisture resistant. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the plastic or waxed paper in the method of packaging the foodstuff of Davy to make the package moisture resistant.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davy (3199756) in view of Bonerb (4658989).

Davy, as mentioned above, discloses all the claimed limitations, except for forming the pleat in the bags. However, Bonerb teaches to form the pleats in the bags to make the bags expandable (see col. 1, lines 63-65). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to having provided the pleats in the bags as taught by Bonerb in the method of packaging of Davy to make the bags expandable.

Response to Arguments

8. Applicant's arguments with respect to claims 1-20 and 22 have been considered but they are not persuasive. Applicant's argument regarding the Davy's bag is flat and does not have the predetermined volume (page 3, lines 10-20), note that, Davy discloses in fig. 4, that he is forming the tube (so it is not flat) and filling it the same manner as applicant is forming and filling his bag and therefore it is not flat and has predetermined amount of volume. Furthermore, Davy is depositing a predetermined amount of food-stuff (see col. 4, line 39), which is less than the volume of the bag to contain the product. Therefore the bag contains a predetermined amount of air, and

therefore it is inherent that the air will act as a cushion to protect the foodstuff in the bag.

In response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 601 (CCPA 1915). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining reference is what the combination of disclosures take, as a whole would suggest to one of the ordinary skill in the art. *In re McLaughlin*, 110 USPQ 209 (CCVA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case applicant rely on Bonerb ('989) to suggest to one of the ordinary skill in the art that by providing the pleat in the bag one can make the bag expandable, and therefore it obvious to of the ordinary skill in the art to having provided the pleat as taught by Bonerb in the Davy's bag to make it more expandable and thus protect against crushing (see col. 4, line 5-7).

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M Desai whose telephone number is (703) 308-5830. The examiner can normally be reached on 7:00 AM-5: 30 PM, Mon-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hemant M Desai
Examiner
Art Unit 3721

HMD

Stephen F. Gerrity
Primary Examiner